

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE ENROLLED ACT No. 504

AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-3-5.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 5.2. Delivery Sales of Cigarettes

Sec. 1. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.

Sec. 2. As used in this chapter, "delivery sale" means a transaction for the purchase of cigarettes in which an offer to purchase cigarettes is made electronically using a computer network (as defined in IC 35-43-2-3) or by mail and acceptance of the offer results in delivery of the cigarettes to a named individual at a designated address.

Sec. 3. As used in this chapter, "merchant" means a person or an entity that engages in the selling of cigarettes by delivery sale.

Sec. 4. A merchant may not mail or ship cigarettes as part of a delivery sale unless, before mailing or shipping the cigarettes, the merchant complies with the following:

(1) Obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date



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of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing cigarettes by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the cigarette order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of cigarettes by delivery sale is a taxable event for purposes of IC 6-7-1.

(2) Makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base of valid government issued identification, which must include the date of birth or age of the individual placing the order. A valid government issued identification may include a driver's license, a state identification card, military identification, a passport, an official naturalization or immigration document, or a voter registration card. However, if the prospective customer's age cannot be verified using the data base, the prospective customer shall submit a photocopy or other image of a valid government issued identification that includes the date of birth or age of the customer.

(3) Receives payment for the delivery sale by a check, credit card, or debit card issued in the name of the prospective purchaser.

(4) Submits, to each credit or debit card acquiring company with whom the merchant has credit or debit card sales, information in an appropriate form so that the words "tobacco products" will be printed on the purchaser's credit or debit card statement when cigarettes are purchased using a credit or debit card.

Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and



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(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 7(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF CIGARETTES TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers cigarettes as part of a delivery sale without first receiving proof from the merchant of compliance with section 7(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships cigarettes as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

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- (A) delivers the cigarettes without first complying with section 7(a) of this chapter; or
- (B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (c)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

Sec. 6. (a) A merchant shall, before mailing or shipping cigarettes as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships cigarettes as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

- (1) The name and address of the customer to whom the cigarettes were delivered.
- (2) The brand name of the cigarettes that were delivered to the customer.
- (3) The quantity of cigarettes that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 is considered to satisfy the requirements of this section.

Sec. 7. (a) A merchant who delivers cigarettes to a customer as part of a delivery sale shall:

- (1) collect and pay all applicable taxes under IC 6-7-1; or
- (2) place a legible and conspicuous notice on the outside of the container in which the cigarettes are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these cigarettes have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these cigarettes, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these cigarettes."

In addition to the requirements in subsections (1) and (2), as part

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of a delivery sale the merchant shall inform the customer in writing of all state taxes imposed by the customer's state of residence, including a computation of the amount of taxes due.

(b) The alcohol and tobacco commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the defendant has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If the defendant has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If the defendant has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If the defendant has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If the defendant has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

Sec. 8. The alcohol and tobacco commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells cigarettes by delivery sale to a person less than eighteen (18) years of age.

The alcohol and tobacco commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 2. IC 34-24-1-1, AS AMENDED BY P.L.123-2002, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

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(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
- (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).
- (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- (viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

- (A) commit, attempt to commit, or conspire to commit;



- (B) facilitate the commission of; or
- (C) escape from the commission of; murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.
- (5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:
 - (A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
 - (B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
 - (C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
 - (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- (6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).
- (7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.
- (8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).
- (9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.
- (10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.
- (11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.
- (12) Cigarettes that are sold in violation of IC 24-3-5.2, cigarettes that a person attempts to sell in violation of IC 24-3-5.2, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.2.**
- (b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).
- (c) Equipment under subsection (a)(10) may not be seized unless it

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can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).
- (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.
- (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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SEA 504 — Concur+

